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July 8, 2016

BY ECF

Honorable Alison J. Nathan
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

So Ordered.

Re: Ernest Murphy v. City of New York, et al., 16 Civ. 4415 (AJN)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department and the attorney assigned to the defense of the above-referenced matter of behalf of defendant City of New York (“City”). Defendant City writes to respectfully request a sixty-day enlargement of time, from July 12, 2016 until September 12, 2016, to answer or otherwise respond to the Complaint. This is defendant City’s first request for an enlargement of time in this matter, and plaintiff’s counsel consents to this request for an enlargement of time. The parties also wish to inform the Court that in an effort to move forward in this litigation as expeditiously as possible, the parties have been meeting and conferring regarding the exchange of documents and the identification of all individually named defendants.

By way of background, plaintiff’s Complaint alleges, *inter alia*, excessive force and due process violations on various occasions while plaintiff was in the custody of the New York City Department of Correction (“DOC”) from 2013 until 2016. (See Docket Entry No. 1).

There are several reasons for granting an enlargement of time in this matter. Before this Office can adequately respond to the Complaint, we will need to conduct an investigation into the facts of the case. As the alleged excessive force incident in this case involves numerous named defendants, there are extensive documents that have been requested by this Office from DOC. Without the documents, this Office cannot properly assess this case or respond to the Complaint. An enlargement of time will allow this Office time to receive and review the documents from DOC. Accordingly, this Office requests this enlargement so that we

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may obtain the underlying documentation, properly investigate the allegations of the Complaint and fulfill our obligations under Rule 11 of the Federal Rules of Civil Procedure.

In addition, according to the docket sheet, the individuals named in the caption as Captain Pittman, Officer Sinacore, Officer Dain Deallie, Officer R. Johnson, Captain Sonya Harvey, Officer Solomonoff, Officer Whyte, Captain Kimberly Wiley, Officer Walker, Captain Perry, Captain Williams, Captain D. Johnson and Officer Giles have not been served with process. A decision concerning this Office's representation of these defendants has not yet been made and accordingly this application is not made on their behalf. However, if defendants Pittman, Sinacore, Deallie, Johnson, Harvey, Solomonoff, Whyte, Wiley, Walker, Perry, Williams, Johnson and Giles are served prior to September 12, 2016, we hope that the Court will, *sua sponte*, extend their time to answer until September 12, 2016.

Further, assuming plaintiffs will timely effect service on the individual defendants, the extension should allow time for this office to determine, pursuant to Section 50-k of the New York General Municipal Law, and based on a review of the facts of the case, whether we may represent the individually named defendants. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

I would like to assure the Court that we are attempting to move forward in this litigation as expeditiously as possible, and that the requested enlargement is necessary in order for us to proceed effectively. Accordingly, for the reasons set forth above, defendant City respectfully requests that the Court grant an enlargement of time, until September 12, 2016, to answer or otherwise respond to the Complaint.

Defendant thanks the Court for its time and consideration of the within request.

Respectfully submitted,

/s/

Eviana Englert
Assistant Corporation Counsel
Special Federal Litigation Division

cc:

BY ECF

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